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Staff:	Tiffany S. Tauber
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Commission Action:	

STAFF REPORT: REGULAR CALENDAR**APPLICATION NO.: 1-00-047****APPLICANT: City of Eureka and Bureau of Land Management (BLM)**

PROJECT LOCATION: Along the south end of the Samoa Peninsula, on the foredune area of City of Eureka-owned adjacent to New Navy Base Road, Humboldt County (APNs 401-141-04, -05, -03, -07)

PROJECT DESCRIPTION: (1) Reauthorize off-highway vehicle (OHV) use on 75 acres of foredune area, (2) expand post and cable fencing to include an additional one-acre area of sensitive vegetation, and (3) periodically maintain and rehabilitate trails using a tractor and box scraper.

GENERAL PLAN DESIGNATION: Public Recreation (PR)**ZONING DESIGNATION:** Public Recreation (PR)**LOCAL APPROVALS RECEIVED:** None Required**OTHER APPROVALS REQUIRED:** None

SUBSTANTIVE FILE DOCUMENTS: (1) Humboldt County LCP; (2) Staff Report, Humboldt County LCP Amendment No. 1-93, Dec. 15, 1993, (3) Staff Report, CDP No. 1-98-067, Sept. 25, 1998.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with conditions of the proposed reauthorization of off-highway vehicle (OHV) use as well as the proposed protection of rare and endangered plant species and native dune grass on the site along a portion of the foredunes on property owned by the City of Eureka. Specifically, the project involves (1) continued use of 75 acres of foredunes for OHV riding, (2) expanding two existing post and cable fences to include an additional one-acre area of sensitive vegetation that is closed to vehicle use, and (3) periodic trail maintenance using a small tractor and/or a box scraper.

The project site is located along the south end of the Samoa Peninsula in Humboldt County on approximately 75 acres of foredunes on the City of Eureka Municipal Airport property commonly known as the Eureka Dunes Riding Area. Off-highway vehicle use has been occurring on the subject site since 1998 following the Commission's approval of Coastal Development Permit No. 1-98-067. The project site is located directly adjacent to the Samoa Dunes OHV riding area managed by the Bureau of Land Management (BLM). (Exhibit Nos. 1-4)

The site is known to contain populations of Beach layia (*Layia carnosa*) and Humboldt Bay wallflower (*Erysimum menziesii* spp. *eurekense*), two federally listed endangered plant species. In addition, some of the dune area contains native dune grass. However, most of the foredune area is covered by European beach grass, yellow bush lupine, iceplant, and other invasive exotic plant species that outcompete and displace native dune species. The site contains no threatened or endangered animal species.

Unregulated and indiscriminate riding of OHVs over endangered and sensitive native plants has posed a threat to these coastal resources. With increased OHV use in the last 15 to 20 years, conflicts between such use and sensitive habitat protection have increased throughout the beach and dune areas of Humboldt County. In an effort to address these conflicts, years of intensive study, planning, environmental review, public involvement and numerous hearings over the period from 1990 to 1994 resulted in the Humboldt County Beach and Dunes Management Plan. Although the Coastal Act, rather than the Plan, is the standard of review for the proposed project, the Plan provides a framework for managing the beach and dune areas of the North and South Spits. The plan was incorporated into Humboldt County's certified Local Coastal Program through LCP Amendment No. 1-93, certified by the Coastal Commission with modifications in 1994.

One of the important purposes and outcomes of this plan was to determine and specifically define areas where off-highway vehicles (OHVs) could or could not be ridden. The plan concluded that the only areas where OHV use would be allowed or proposed are the existing Samoa Dunes Recreation Area (managed by BLM), the adjacent City of Eureka Foredunes (the proposed site) and along the wave slope for limited purposes. The remaining portions of the dune system along the Samoa Peninsula (both north and south spits) were identified to be closed to vehicle use. The 75-acre portion of the City of Eureka foredune property, where the City and the BLM now propose to reauthorize and continue the OHV riding area, was rezoned from Natural Resources to Public Recreation as part of the Beach and Dunes Management Plan LCP Amendment (No. 1-93). The purpose of the zoning change was to allow for the creation of a well-defined, but limited area for additional authorized OHV use in exchange for closing the balance of the north and south spits to vehicles.

In 1998, the BLM and the City of Eureka applied for and the Commission approved Coastal Development Permit No. 1-98-067 to provide for regulated off-highway vehicle (OHV) use of the subject site, install fencing and signage to protect sensitive vegetation, and to create a management and enforcement presence in the area. The subject site had been significantly disturbed and degraded over many years prior to the Commission's approval of Coastal Development Permit No. 1-98-067 by unauthorized and indiscriminate OHV use and other human activities.

The original permit was approved with three special conditions including (1) OHV use standards, (2) submittal of annual monitoring reports, and (3) a two-year time period for authorization of development. Special Condition No. 3 required that OHV use authorized by CDP No. 1-98-067 cease on December 31, 2000 and that a new coastal development permit be obtained to authorize continued use of the area for OHV riding after that date.

Consistent with the requirements of Special Condition No. 3 of the original permit, the applicants are now seeking new project authorization to continue to use the foredune area for OHV riding as well as protect and maintain populations of rare and endangered plant species and native dune grass by expanding post and cable fence enclosures around these areas.

At this particular site, the Commission has previously determined that the rare and endangered plant species and native dune grass are ESHA, but not the portion of the dunes vegetated with invasive, exotic species. At this location, the Commission has previously found that allowing riding in this previously degraded area covered with invasive, exotic vegetation is beneficial for the overall protection of dune habitat throughout the North Spit. The proposed OHV riding area concentrates vehicle use to the northern most tip of the North Spit foredunes and establishes a management and enforcement presence that in turn minimizes illegal and indiscriminate riding in other dune areas. Thus, vehicle use is kept restricted to an area of previously disturbed and degraded dunes while minimizing the incidence of OHV trespass and habitat disruption in other dune areas. Allowing regulated OHV use at the subject site provides for protection of not only the ESHA that is enclosed and excluded from vehicles on the site, but also provides for increased protection of the overall dune system of the area. The overall protection of the dune habitat

throughout the North Spit is essential to the viability of the rare and endangered species and native dune grass within the dynamic dune system.

Furthermore, allowing for continued OHV use at the site is consistent with the Beach and Dunes Management Plan that provides for a cooperative solution to balancing OHV recreation and resource protection in this specific area. This compromise was carefully crafted years ago with the development of the Humboldt County Beach and Dunes Management Plan and the results of the first two years of riding at the Eureka/BLM site have been encouraging, demonstrating that the rest of the North Spit dune system is being protected from illegal, destructive riding by the OHV riding agreement called for in the certified LCP and authorized by the Commission in Permit No. 1-98-067.

The proposed project, as conditioned, will avoid significant disruption to and provide for the continuance of the rare and endangered plant species and native dune grass adjacent to the riding area. In a larger sense, authorization of OHV use in this well-defined, but limited area will continue to relieve the pressure caused by indiscriminate riding on sensitive habitat areas throughout the balance of the nearly 3,500 acres of open dunes which are set aside for habitat protection under the County's LCP.

To ensure that the proposed project is conducted in a manner that will fully protect against any significant disruption of habitat values, be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas, staff recommends that the Commission attach several special conditions.

Special Condition No. 1 sets forth OHV management standards that require (1) all fences and signage be continually maintained in a manner adequate to protect all rare and endangered plant species and native dune grass within the area; (2) management activities be carried out to effectively prohibit OHV use of all unauthorized areas (the areas fenced off and enclosed to protect rare and endangered plant species and native dune grass); (3) annual monitoring of the rare and endangered plant species and native dune grass at the site be conducted to determine the effects of the allowed OHV use on these resources; and (4) the applicants remove exotic invasive vegetation, including but not limited to, European beachgrass, yellow bush lupine, and iceplant from the fenced enclosure on a regular and on-going basis and shall briefly close the OHV area if necessary to allow for eradication projects by responsible parties to be performed at the site.

Special Condition No. 2 requires the applicants to provide an annual report to the Executive Director by November 1 of each year beginning in 2001 that discusses compliance with Condition No. 1 above. Special Condition No. 3 requires the applicant to apply for an amendment to Coastal Development Permit No. 1-00-047 to establish a new fenced enclosure within the project site that will, to the maximum extent feasible, provide for the protection and continuance of at least the same size and type of area of rare and endangered plant species and native dune grass previously protected by the damaged fenced enclosure if fenced enclosures are damaged by storm surge or other natural processes. Special Condition No. 4 requires that any trail maintenance that involves cutting new trails or relocating existing trails shall require an

amendment to coastal development permit No. 1-00-047. Special Condition No. 5 requires OHV use authorized by this permit to cease on December 31, 2005 and requires a new coastal development permit or an amendment to this permit for continued use of the area for off-highway vehicle (OHV) riding after that date.

As conditioned, staff believes that the project is fully consistent with the Chapter 3 policies of the Coastal Act.

STAFF NOTES:

1. **Standard of Review**

The proposed project is located in the County of Humboldt. The County has a certified LCP, but the project that is the subject of Coastal Development Permit Application No. 1-00-047 is within the Commission's retained jurisdictional area. Therefore, the standard of review that the Commission must apply to the project is the Coastal Act. The certified LCP policies, including those in the Beach and Dunes Management Plan LCP Amendment No. 1-93, are advisory.

I. **MOTION, STAFF RECOMMENDATION AND RESOLUTION:**

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-00-047 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Attachment A.

III. SPECIAL CONDITIONS:

1. OHV Management Requirements:

Use of the area as an off highway vehicle (OHV) riding area shall be subject to the following conditions:

- (a) All fences and signage shall be continually maintained in a manner adequate to protect all rare and endangered plant species and native dune grass within the area;
- (b) Management activities shall be carried out to effectively prohibit OHV use of all unauthorized areas (the areas fenced off and enclosed to protect rare and endangered plant species and native dune grass);
- (c) Annual monitoring of the rare and endangered plant species and native dune grass at the site shall be conducted to determine the effects of the allowed OHV use on these resources; and
- (d) The applicants shall remove exotic invasive vegetation, including but not limited to, European beachgrass, yellow bush lupine, and iceplant from the fenced enclosure on a regular and on-going basis and shall briefly close the OHV area if necessary to allow for eradication projects by responsible parties to be performed at the site.

2. Annual Report

The applicants shall provide an annual report to the Executive Director of the Coastal Commission by November 1 of each year beginning in 2001. The report shall discuss compliance with Condition No. 1 above, and that to that end may incorporate annual monitoring reports prepared pursuant to the June 1998 Memorandum of Understanding between the Bureau of Land Management and the City of Eureka. In particular, the report shall describe:

- (a) the location and duration of any breaches in the fencing permitted by this permit, and the effect of such breaches on the protected habitat;
- (b) the management activities and programs carried out to eliminate trespass into the fenced off areas, including user-education activities, person-hours of patrols and enforcement activities;
- (c) data demonstrating any changes in the frequency, cover or census of endangered and/or native plants; and
- (d) conservation and restoration activities undertaken, including efforts to remove exotic plants.

3. Maintenance of Fences and ESHA Protection

If fenced enclosures are damaged by storm surge or other natural processes, the permittee shall apply for an amendment to Coastal Development Permit No. 1-00-047 to establish a new fenced enclosure within the project site that will, to the maximum extent feasible, provide for the protection and continuance of at least the same size and type of area of rare and endangered plant species and native dune grass previously protected by the damaged fenced enclosure.

4. Trail Maintenance

Trail maintenance that involves cutting new trails or relocating existing trails shall require an amendment to coastal development permit No. 1-00-047.

5. Permit Expiration

The OHV use authorized by this permit shall cease on December 31, 2005. Continued use of the area for Off Highway Vehicle (OHV) riding after that date shall require a new coastal development permit or an amendment to this permit.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

1. SITE DESCRIPTION

The project site is located along the south end of the Samoa Peninsula in Humboldt County. The specific location is on the foredunes of the City of Eureka Municipal Airport property on approximately 75 of 150 acres commonly known as the Eureka Dunes Riding Area, or the Skypark Foredunes. Uses on the adjacent portions of the airport property include an active airstrip, a bed and breakfast, an area previously used as a dredge spoil site and other commercial uses. The project site does not include the wave slope (that area below high tide), which is owned by the state of California and is currently open to limited OHV use (i.e. for commercial fishing and disabled access). The site is adjacent to the 330-acre Samoa Dunes Recreation Area that is managed by the Bureau of Land Management (BLM). (Exhibit No. 1-4)

The property consists mostly of accreted land, formed as a by-product of jetty construction in the early 1900's. The approximately 150-acre foredune area, of which 75 acres is proposed for OHV riding use, is heavily vegetated, primarily with non-sensitive, introduced exotic European beachgrass and yellow bush lupine, but with pockets of sensitive species. Both of these areas have been historically impacted by unrestricted OHV riding.

The property as a whole contains areas of native dune mat, native beachgrass, herbaceous and woody hollows, as well as dune areas of moderate to intensive exotic plant coverage. There are

seven defined areas within the Samoa Dunes Recreation Area and the City of Eureka property, each with their characteristic native and exotic flora and fauna. These areas include the (1) wetland protection area, (2) OHV staging area, (3) open riding area at the Samoa Dunes, and (4) Cypress Grove picnic area on the BLM property. On the City of Eureka property the distinct areas include (5) the rare plant protection area, (6) the Natural Resource area, and (7) the open riding area along a portion of the foredunes (subject site). (Exhibit No. 3)

A 120-acre wetland area on the BLM site adjacent to the OHV riding area is fenced and protected from vehicle use and contains several native habitats such as herbaceous hollows, dune mat, brackish marshes and woody hollows. The remaining acreage is open to OHV use and is composed of degraded dune habitat consisting of non-native species such as European beach grass, yellow bush lupine and iceplant. These invasive plants are a detriment to native plant communities, and a large amount of labor has been expended in nearby areas to eradicate these weeds and restore conditions needed for native plants and wildlife.

A 40-acre endangered plant protection area is also adjacent to the OHV riding area and is closed to vehicles to provide and protect habitat for two endangered plant species, the Humboldt Bay wallflower (*Erysimum menziesii* spp. *eurekense*) and Beach layia (*Layia carnosa*). These endangered plant species require semi-stabilized native dune mat and more open, bare sand areas, respectively. An 80-acre portion of the City of Eureka property referred to as the "Mitigation Bank" was set aside and fenced off for resource protection in 1990 for future mitigation should industrial development be proposed in the adjacent area zoned for that use. An additional area of about 110 acres is zoned Natural Resources and contains about 30 acres of dune mat habitat, where no use other than vegetation rehabilitation or pedestrian use is allowed.

2. BACKGROUND & PROJECT DESCRIPTION

There are approximately 3,460 acres of dunes within the County's coastal area. The North and South Spits along Humboldt Bay contain the longest continuous stretch of dunes (approximately 26 miles) and more than one-third of the 85 miles of sand dunes found in northern California. Unauthorized off-highway vehicle use has occurred on the foredunes and interior dune mat habitat for many years. Unregulated riding of OHVs over endangered and sensitive native plants has posed a threat to these coastal resources. With increased OHV use in the last 15 to 20 years, conflicts between such use and sensitive habitat protection have increased throughout the beach and dune areas of Humboldt County. The County of Humboldt has been seeking to address these conflicts since the early 1980's. In 1990, the Board of Supervisors obtained funding from the State Coastal Conservancy to conduct a detailed study of natural and cultural resources, sensitive habitat, enhancement and restoration opportunities, passive recreational uses, as well as active recreation such as OHV riding as a basis for a balanced and comprehensive management plan.

After years of intensive study, planning, environmental review, public involvement and numerous hearings over the period from 1990 to 1994, the County adopted the Humboldt County Beach and Dunes Management Plan to provide a framework for managing the beach and dune

areas of the North and South Spits. The plan was incorporated into Humboldt County's certified Local Coastal program through LCP Amendment No. 1-93, certified by the Coastal Commission with modifications in 1994.

One of the important purposes and outcomes of this plan was to determine and specifically define areas where off-highway vehicles (OHVs) could or could not be ridden. The intent was to set forth a plan that would accommodate the high demand for OHV use while protecting sensitive dune vegetation and other passive forms of recreation. The plan concluded that the only areas where OHV use would be allowed or proposed are the existing Samoa Dunes Recreation Area (managed by BLM), the adjacent City of Eureka Foredunes (the proposed site) and along the wave slope for limited purposes. The remaining portions of the dune system along the Samoa Peninsula (both north and south spits) were identified to be closed to vehicle use. The 75-acre portion of the City of Eureka foredune property, where the City and the BLM now propose to reauthorize the OHV riding area, was rezoned from Natural Resources to Public Recreation as part of the Beach and Dunes Management Plan LCP Amendment (No. 1-93). The purpose of the zoning change was to allow for the creation of a well-defined, but limited area for additional authorized OHV use in exchange for closing the balance of the north and south spits to vehicles.

Although the subject property is within the Commission's retained jurisdiction and any LCP policies concerning the area are only advisory in nature, the 1994 LCP amendment that incorporated the Beach and Dunes Management Plan into the LCP provides useful guidance for planning at the site. In particular, the Commission suggested a modification, subsequently adopted by the County, specifically outlining how to resolve the conflict between OHV use and resource protection on the subject property. This Modification "A" stated:

- A. *To (1) eliminate a potential conflict between redesignating a portion of the foredune of the City of Eureka Airport property to Public Recreation to allow for development of an expanded OHV riding area in a degraded dune area and the policies of the Humboldt Bay Area Plan that protect all vegetated dunes as environmentally sensitive habitat areas and preclude such development, and (2) ensure that any OHV riding area developed at this site will adequately protect all portions of the dunes vegetated with native beach grass or rare and endangered plant species, add the following to subsection 11, "Beach and Dune Areas," of Section 3.30 of the Plan, "Natural Resources Protection Policies and Standards:*

11. *Beach and Dune Areas*

- c. *The area designated "Public Recreation" along the foredune zone of the City of Eureka Airport property north of the BLM/Samoa Dunes Recreation Area contains dune habitat that has been severely degraded over time due to extensive previous use for recreation OHV riding and other human disturbance.*

- (1) *Although the dune vegetation in this area includes some native dune grass and populations of the endangered plant species Menzies (Humboldt Bay) wallflower and Beach layia, most of the vegetation consists largely of non-native invasive species such as European beach grass and bush lupine. Section 3.30B(1)(a)(2) of this plan and 3.30B(1)(a)(4) of this plan states that all vegetated dunes along the North Spit to the Mad River and along the South Spit are environmentally sensitive habitats. Because of the high percentage of invasive plant species and the degraded nature of this particular area, only those portions of the vegetated dunes in this area actually containing either rare and endangered plant species or native dune grass are considered to be environmentally sensitive vegetated dune habitat. Pursuant to Sections 3.30B(1)(a)(1) and 3.30(1)(a)(4) of this plan, any wetlands or critical habitats for rare and endangered animal species that might exist in the area are also considered to be environmentally sensitive habitat areas.*
- (2) *The area is proposed for development as an off highway vehicle riding area under the County's Beach and Dunes Management Plan. To protect the environmentally sensitive vegetated dune habitat within the area, any such development shall be required to do the following:*
 - (a) *Fence and prohibit use of all portions of the affected dunes containing rare and endangered plant species or native beach grass.*
 - (b) *Conduct annual monitoring for rare plant species to determine the effects of activities on the relative viability of the population in any given year and perform necessary remediation measures.*

The above-referenced language recognizes the degraded state of the dune habitat and defines environmentally sensitive habitat areas (ESHA) as being those portions of the vegetated dunes in the area that contain either rare and endangered plant species or native dune grass, in addition to any wetlands or critical habitats for rare and endangered animal species. The Commission approved the LCP Amendment in 1994 with the above referenced language and allowed the property to be rezoned from Natural Resources to Public Recreation to provide for a well-defined, concentrated OHV riding area.

The Coastal Commission also approved creation of the BLM Samoa Dunes Recreation Area on 330 acres of federal land at the south end of the Samoa Peninsula in 1983 through its concurrence with Consistency Determination CD-27-82. The BLM subsequently developed an OHV recreation area at the site including trail systems, a staging area adjacent to the trails, signing and fencing of sensitive habitat areas and other non-OHV areas. With the adoption of the Beach and Dunes Management Plan, and subsequent OHV closures elsewhere, the BLM Samoa Dunes Recreation Area experienced a substantial increase in the number of OHVs using the area. The increased use at the BLM property resulted in an increased incidence of trespass onto the adjacent City of Eureka

property by OHV riders coming from the BLM riding area. This increased OHV use and trespassing resulted in off-site impacts to the Eureka property. Vehicles were observed riding throughout the foredunes as well as the interior dune mat habitat where sensitive plant species occur. Because these OHVs originate from the Samoa Dunes riding area, the BLM felt some degree of responsibility and need for action to keep off-site impacts to a minimum. Consequently, the City of Eureka and the BLM entered into a Memorandum of Understanding (MOU) in June 1998 as a means of implementing the objectives stated in the Beach and Dunes Management Plan (as certified by the Commission), and particularly, as stated in the MOU (Exhibit No. 6):

...for the purpose of cooperatively managing approximately 80 acres of what is commonly known as the Eureka Foredunes, located adjacent to the Samoa Dunes Recreation Area at the north jetty area of the Samoa Peninsula. More specifically, this agreement provides a framework for managing the aforementioned area so that safe and orderly off-highway vehicle (OHV) recreation use can occur while protecting endangered and native plant species, and their habitats. This MOU outlines cooperative activities and clarifies the range of shared tasks, which includes, but may not be limited to: (1) constructing and maintaining protective fencing, (2) maintaining OHV trails, (3) maintaining the property, (4) installing and maintaining signs, (5) resource monitoring, (6) patrols, (7) writing environmental documents and (8) obtaining permits.

In an effort to ease congestion at the BLM riding area and to prevent unrestricted resource degradation on the adjacent dune area, the BLM and the City entered into a cooperative management effort to expand the OHV riding area and to provide for monitoring and enforcement measures. In 1998, the City and the BLM applied for and received a coastal development permit (CDP No. 1-99-067) to provide for regulated OHV use on 75 acres of the City of Eureka foredunes to expand and connect with the BLM riding area. The permit also authorized installation of signs and fencing to delineate the riding area boundaries and to protect areas of sensitive vegetation (ESHA).

The permit was approved with three special conditions including (1) OHV use standards, (2) submittal of annual monitoring reports, and (3) a two-year time period for authorization of development. Special Condition No. 1 required that the OHV riding area be subject to particular standards. First, Special Condition No. 1 required all fences and signage to be continually maintained in a manner adequate to protect the environmentally sensitive vegetated dune habitat within the area. Secondly, the condition required that management activities be carried out to effectively prohibit OHV use of all unauthorized areas such as the fenced off and enclosed areas containing rare and endangered plant species or native beach grass. Thirdly, the condition required annual monitoring of the environmentally sensitive vegetated dune habitat to determine the effects of the allowed OHV use on these resources. Lastly, the condition required the applicants to encourage the removal of exotic invasive vegetation from the site and to briefly close the OHV area if necessary to allow for eradication projects by responsible parties to be performed at the site.

Special Condition No. 2 required the applicant to submit an annual monitoring report to the Executive Director that would discuss (1) how the standards of Condition No. 1 are being met, (2) the location and duration of any breaches in the fencing and the effect of such breaches on the protected habitat, (3) the management activities and programs carried out to eliminate trespass into the fenced-off areas including user-education activities, person-hours of patrols and enforcement activities; (4) data demonstrating any changes in the frequency, cover or census of endangered and/or native plants, and (5) conservation and restoration activities undertaken including efforts to remove exotic plants. Special Condition No. 1 and No. 2 reiterate and incorporate into the permit management guidelines set forth by the BLM and the City in the MOU.

Special Condition No. 3 required that OHV use authorized by CDP No. 1-99-067 cease on December 31 of the second year (2000) following Commission approval of the original permit or any subsequent amendment. Condition No. 3 requires a new coastal development permit or an amendment to the original permit to authorize continued use of the area for OHV riding after the expiration date.

Pursuant to the requirements of Special Condition No. 3 referenced above, the applicants are seeking new project authorization to continue to use the foredune area for OHV riding as well as protect and maintain populations of endangered native plant communities and native dune grass colonies by expanding post and cable fence enclosures around sensitive vegetation areas.

Specifically, the project involves (1) continued use of 75 acres of foredunes for OHV riding, (2) expanding two existing post and cable fences to include an additional one-acre area of sensitive vegetation that is closed to vehicle use, and (3) periodic trail maintenance using a small tractor and/or a box scraper. (Exhibit No. 4 & 5)

3. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30107.5 of the Coastal Act defines "environmentally sensitive habitat area" as:

any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states in part that:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts*

which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Existing Conditions

The subject site was significantly disturbed and degraded over many years prior to the Commission's approval of Coastal Development Permit No. 1-99-067 by unauthorized and indiscriminate OHV use and other human activities. The site is known to contain populations of Beach layia and Humboldt Bay wallflower, two federally listed endangered plant species. In addition, some of the dune area contains native dune grass. However, most of the foredune area is covered by European beach grass, yellow bush lupine, iceplant, and other invasive exotic plant species that outcompete and displace native dune species.

The site contains no threatened or endangered animal species. Western snowy plovers are federally listed as a threatened species and have historically been observed on the Samoa peninsula. The small shorebird resides and breeds on open beaches and gravel bars. The BLM has conducted surveys for breeding snowy plovers on the Samoa peninsula on a monthly basis during spring and summer since 1998. These surveys follow the U.S. Fish and Wildlife Service protocol and involve a trained surveyor walking the beach and all suitable habitat looking and scanning for plovers with binoculars. To date, these surveys have not detected any western snowy plovers on the subject site or the surrounding area. Suitable plover habitat at the subject site is limited by the extensive dune stabilization caused by the introduction of European beachgrass.

Protection of Environmentally Sensitive Habitat Areas (ESHA)

In many recent decisions, the Commission has considered entire dune areas to be ESHA largely because of the dynamic nature of a dune system. While coastal dunes in other areas statewide may be considered ESHA regardless of the vegetation present or the physical condition of the dunes, at this particular site, the Commission has previously determined that the rare and endangered plant species and native dune grass at this location are ESHA, but not the portion of the dunes vegetated with invasive, exotic species.

In its action on Humboldt County LCP Amendment No. 1-93 (the Beach and Dunes Management Plan), the Commission determined that those portions of the site with endangered plant species and native dune vegetation fall under the section 30107.5 definition of "environmentally sensitive habitat area." The Commission further found that developing the site in a manner that would preclude entry into these areas through the use of fencing and signing would be in conformance with Coastal Act Section 30240. Specifically, the Commission found:

Not every sand dune or sand dune area necessarily meets the definition of an ESHA set forth in Coastal Act Section 30107.5...[T]he Commission finds that in this portion of the Humboldt beach and dunes area, dunes vegetated with invasive species such as European beach grass and bush lupine do not meet the definition

of an environmentally sensitive species because these plant species are not rare or especially valuable in this area. In fact, these species are damaging to native species in that they outcompete and displace the native species. Many dune restoration projects in the Humboldt County area have included the removal of these exotic species.

Based on botanical surveys conducted as of the planning process for the Beach and Dunes Management Plan, the vast majority of the 150-acre foredune area proposed for ...OHV park use is not vegetated with the environmentally sensitive plant species. Thus, there would appear to be sufficient acreage within the site to develop the intended use without necessarily intruding on the ESHA areas...[D]eveloping the site in a manner that would preclude entry to the ESHA areas throughout the use of fencing and signing...would then be in conformance with Coastal Act Section 30240. (Adopted Findings, Humboldt County LCP Amendment 1-93, Beach and Dunes Management Plan, April 11, 1994.)

The non-native, invasive species that cover the majority of the foredunes at the site are a threat to native plants in that they outcompete and displace the native species. Many dune restoration projects in the beach and dune areas of Humboldt County have included the removal of these exotic species because these plants are neither rare or especially valuable in their role in the dune system. This interpretation does not mean that an unvegetated sand dune area or a sand dune vegetated with invasive species is forever incapable of becoming an ESHA, as it has been shown from past restoration successes that native plant species can be reestablished in these areas. However, the Commission must consider the condition of the sand dune area at the time it is asked to review a proposal for consistency with the Coastal Act.

It is clear, however, that as defined by Coastal Act Section 30107.5, the Humboldt Bay wallflower, the Beach layia, and native dune grass are all considered to be environmentally sensitive since: (1) the plants are either rare or play an especially valuable role in an ecosystem and (2) they are easily disturbed or degraded by human activities and developments such as OHV riding. The project proposes to avoid and protect these areas consistent with Section 30240 that requires development to protect ESHA from significant disruption of habitat values and allows only uses dependent on such resources within these areas.

According to the annual monitoring reports required by Special Condition No. 2 of the original permit (1-99-067), the regulated OHV use in the area has been successful in protecting the rare and endangered plant species and native dune grass on and off-site over the past two years. The annual reports were required to monitor the impacts of OHV use on the site over the course of the Commission's two-year authorization of the use of the foredune as a riding area. The original permit authorized installation of 1,400 linear feet of post and cable fencing to delineate areas open for riding and to fence off approximately four acres of endangered and sensitive vegetation. The permit also authorized installation of signs to display safety information and to indicate areas open and closed to vehicle use. As required by conditions of the previous permit, all fences and signage at the site have been continually maintained. The applicant indicates that

there has been no evidence of any breaches in the enclosures or the easterly perimeter fence to suggest that it has not been effective in keeping OHVs in the designated areas. The annual monitoring reports indicate that OHV use has not had a significant adverse impact on the rare and endangered plant species and native dune grass within the fenced enclosures and has not adversely impacted western snowy plovers. Additionally, the monitoring reports indicate that enforcement efforts have been effective in minimizing illegal OHV traffic on other parts of the dune system where vehicle riding is prohibited.

According to the applicants, OHV use averages approximately 50 vehicles per week except on holiday weekends, when use averages 75 vehicles per day. The riding area is patrolled by either the BLM Law Enforcement Ranger, Outdoor Recreation Planner, or the Samoa Dunes caretaker at a minimum of five days per week amounting to an average of eight person hours of patrols. The law enforcement agreement between the Humboldt County Sheriff's Department, Eureka Police Department and the BLM was reauthorized on October 1, 1999 providing additional law enforcement patrols.

The BLM and the Lost Coast 4x4 Club have developed an agreement to provide on-the-ground user education, maintenance of trails and an occasional workday to remove exotic plants from the enclosures. The applicant indicates that feedback from the local environmental groups such as the Humboldt Coastal Coalition and the Dunes Forum regarding BLM's performance in managing the riding area has been very positive. As a result of the added law enforcement presence by both BLM and the Humboldt County Sheriff's Department, there has been a significant reduction in illegal OHV use in closed areas of the City of Eureka property and on other land along the peninsula to the north.

Grant funds amounting to \$48,000 were secured from the "Green Sticker" program, administered by the California Department of Parks and Recreation, for management of both the Samoa Dunes Recreation Area and the Eureka Dunes Riding Area for the period October 1, 1999 through September 30, 2000. Another \$56,000 has been secured for the period October 1, 2000 through September 30, 2001. A Law Enforcement Agreement with Humboldt County Sheriff's Department and Eureka Police Department for \$10,000 that provides for patrolling areas outside of the designated riding areas to ensure that no riding occurs is also in place. The applicants indicate that they anticipate these sources of funding to be available well into the future so long as opportunities for OHV recreationists remain established.

With enforcement measures and funding in place, there is a mechanism by which illegal and indiscriminate OHV riding in unauthorized areas can be curbed. By providing for regulated OHV use in a consolidated, well-defined and enforceable area, riding throughout other areas of the dunes along the peninsula is reduced, thereby minimizing adverse impacts to environmentally sensitive habitat areas within the larger dune system.

At this location, allowing riding in this previously degraded area covered with invasive, exotic vegetation is beneficial for the overall protection of dune habitat throughout the North Spit. The overall protection of the dune habitat throughout the North Spit is essential to the viability of the

rare and endangered species and native dune grass within the dynamic dune system. Providing an authorized riding area keeps OHV riders off of other dune areas and provides enforcement funds to ensure that riding is restricted to the authorized area. This compromise was carefully crafted years ago and the results of the first two years of riding at the Eureka/BLM site have been encouraging in terms of demonstrating that the rest of the North Spit dune system is being protected from illegal, destructive riding by the OHV riding agreement called for in the certified LCP and authorized by the Commission in Permit No. 1-99-067. Therefore, the Commission finds the proposed project is consistent with the requirements of Section 30240 because the project will protect the overall dune system on the North Spit against significant disruption of habitat values.

Special Conditions Required for the Protection of ESHA

To ensure that the proposed project is conducted in a manner that will fully protect against any significant disruption of habitat values, be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas, the Commission attaches several special conditions as discussed below.

The installation of fences and signs approved under the original permit (1-99-067) has proven to be successful in precluding OHV entry into the rare and endangered plant species and native dune grass. However, the fences and signs alone are not sufficient to provide the level of protection necessary to ensure the continuance of the rare and endangered plant species and native dune grass adjacent to the riding area. For example, if the fences are not maintained, or if illegal use in the fenced-off areas is not controlled, these sensitive areas could be subject to significant disruption, inconsistent with Section 30240. Therefore, the Commission attaches Special Condition No. 1, similar to that attached to the original permit, to incorporate into this permit, the management objectives set forth in the BLM/City of Eureka MOU. These conditions assure that the proposed OHV use of the site does not intrude into the rare and endangered plant species and native dune grass on the site, and thereby remains a use consistent with Section 30240 of the Coastal Act.

Specifically, Special Condition No. 1 incorporates measures that the BLM commits itself to in the MOU (Exhibit No. 6). These include (a) requiring that all fences and signage be maintained to prevent vehicles from affecting rare and endangered plant species and native dune grass; (b) that management activities be carried out to effectively prohibit OHV use of these areas; and (c) that monitoring be conducted to determine the effects of the proposed use. Monitoring the effectiveness of the management measures set forth in the MOU and Special Condition No. 1 is essential to ensure protection of the habitat. Therefore, Special Condition No. 2 requires an annual monitoring report (also called for in the applicants' MOU) be submitted to the Executive Director to demonstrate how the objectives of Special Condition No. 1 are being met.

To ensure that the Commission has the opportunity to address the use at the site in the future and ensure the effectiveness of the management objectives in protecting the rare and endangered plant species and native dune grass on the site, it is necessary to limit the use to five years.

Therefore, the Commission attaches Special Condition No. 5 to limit the duration of OHV use authorized by this permit and require the applicants to obtain a coastal development permit amendment to continue use of the area for OHV riding after five years.

The original permit authorized installation of fencing to delineate areas open for riding and to fence off approximately four acres of sensitive vegetation to prevent intrusion by OHVs. Annual monitoring of the enclosed ESHA began on April 1, 1999. The purpose of the monitoring is to observe and measure the vegetation components found within the protective endangered plant enclosures as well as in the open riding area. Management objectives set forth by the BLM are to maintain or exceed the relative frequency of two endangered plant species, Humboldt Bay wallflower (*Erysimum menziesii* ssp. *Eurekense*) and Beach layia (*Layia carnosa*). Monitoring methods include the quadrant frequency method, which measures cover and presence/absence of all species that occur in the sample set. Observations were made of generalized changes as well as any plant community variations in the open riding area. Permanent photo points have also been established for both the enclosures and open riding area. This information provides photo-documentation of OHV impacts to any existing plant community. Conclusions of this year's monitoring indicate that Beach layia is abundant within the enclosures. Humboldt Bay wallflower was found in one enclosure, however, none of the individuals fell into the sample, meaning that they had a very low frequency. Initial photos of the photo points within the open riding area show solid stands of European beach grass with virtually no variation.

As noted above, the fences were not destroyed or invaded by OHV users and were successful in delineating the areas closed to vehicle riding. However, the applicants indicate that three of the five enclosures nearest the ocean were destroyed by last winter's excessive storm surge and high tides, destroying approximately one acre of fenced ESHA. Therefore, only two enclosures remain at the southern most portion of the area.

To ensure the continuance of the sensitive and endangered vegetation adjacent to the riding area, the applicants propose to connect the two remaining enclosures and expand the enclosed area to include an additional acre of sensitive vegetation to replace the area lost to natural processes (Exhibit No. 5). The three damaged enclosures were in close proximity to the water's edge and were subject to wave erosion and storm surge at periods of high tide. The remaining enclosures and the proposed expansion would be located such that they will not be as directly subject to erosion and wave action. The Commission finds that one large enclosed area as opposed to five small enclosures will more effectively enhance the viability of sensitive and endangered plant species and native dune grass. The single, expanded enclosure area will provide for the continuance of the ESHA adjacent to the riding area pursuant to Section 30240(b), provided that the invasive exotic species within the enclosure are removed to maximize the habitat area available for the colonization of sensitive and endangered species. Therefore, Special Condition No. 1(d) requires the applicant to remove all exotic species from the enclosure on a regular and on-going basis to protect the viability of the rare and endangered plant species and dune grass. The Commission further notes that it is possible that like the previous enclosures, natural processes could destroy the remaining and expanded fenced enclosure. The dynamic nature of the dunes system would typically allow dune vegetation to reestablish itself following

elimination by natural processes. However, if the enclosures are destroyed by natural means, OHV riding in the area would likely preclude the environmentally sensitive vegetation from reestablishing naturally. Therefore, to ensure the continuance of the ESHA adjacent to the riding area, Special Condition No. 3 requires the applicant to apply for a coastal development permit amendment to reestablish and relocate, to the maximum extent feasible, a fenced area of equivalent nature and size should the enclosure be damaged by storms or other natural events.

The applicants also request authorization for periodic maintenance of the designated OHV trails. The applicants indicate that over time and with extended use, the trails become uneven, difficult to maneuver, and potentially dangerous. Trail maintenance, grooming, and rehabilitation is required periodically to keep riders on the designated trails. Ungroomed and bumpy trails detour riders from the designated trails and often results in riders cutting trails or creating new trails. Trail maintenance is also required to ensure safety by creating clear intersections and direction to prevent collisions. The applicants indicate that active management of the area is essential to keep riders and other recreators safe and to keep riders on the authorized trails and out of potentially sensitive habitat areas. Periodic trail maintenance often involves using a rake, a box scraper, and sometimes a small tractor to smooth the trails.

The Commission finds that trail maintenance will not adversely affect the integrity of the dunes or enclosed ESHA at this location. Rather, as noted above, maintaining the trails discourages riders from venturing off the trail into potentially sensitive habitat areas. However, cutting new trails or relocating trails could have potential adverse impacts to ESHA if the trails were cut or located through an area of sensitive or endangered vegetation. Therefore, to minimize potential significant disruption to environmentally sensitive vegetation on the site, the Commission attaches Special Condition No. 4 which requires the applicant to apply for a coastal development permit amendment to cut new trails or relocate existing trails. The Commission would then have the opportunity to evaluate whether the proposed trail location would be sited such that it would not cause significant disruption to any environmentally sensitive habitat area.

Conclusion

The Commission finds that allowing regulated OHV use at the subject site provides for protection of not only the ESHA that is enclosed and excluded from vehicles on the site, but also provides for increased protection of the overall dune system of the area. The proposed OHV riding area concentrates vehicle use to the northern most tip of the North Spit foredunes and establishes a management and enforcement presence that in turn minimizes illegal and indiscriminate riding in other dune areas. Thus, vehicle use is kept restricted to an area of previously disturbed and degraded dunes while minimizing the incidence of OHV trespass and habitat disruption in other less-degraded dune areas. Furthermore, allowing for continued OHV use at the site is consistent with the Beach and Dunes Management Plan that provides for a cooperative solution to balancing OHV recreation and resource protection in this specific area. According to information in the annual monitoring report submitted by the applicants, the Eureka foredune riding area has been a positive solution to the on-going need for balancing OHV use and resource protection. The applicants state:

“In summary, the new Eureka Dunes Riding Area has been a successful project during the past two years. Sensitive plant species and their habitat are fenced off and protected, restoration activities within these enclosed areas are continuing, and the degraded habitat containing invasive, exotic plants (the open riding area) has provided an exciting recreation opportunity for OHV enthusiasts. Because they now have this new recreation area, trespass into nearby closed areas has decreased and off-site impacts are at an all time low.”

The proposed project, as conditioned, will provide for the continuance of the ESHA adjacent to the riding area and the proposed fenced enclosure will avoid significant disruption to the rare and endangered plant species and native dune grass on the site. In a larger sense, authorization of OHV use in this well-defined, but limited area will continue to relieve the pressure caused by indiscriminate riding on sensitive habitat areas throughout the balance of the nearly 3,500 acres of open dunes which are set aside for habitat protection under the County's LCP.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act, as the project will provide for the protection of the overall dune system and will avoid significant adverse impacts to environmentally sensitive habitat areas.

5. PUBLIC ACCESS

Section 30210 of the Coastal Act requires that maximum public access shall be provided consistent with public safety needs and the need to protect natural resource areas from overuse. Section 30212 of the Coastal Act requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. Section 30214 of the Coastal Act provides that the public access policies of the Coastal Act shall be implemented in a manner that takes into account the capacity of the site and the fragility of natural resources in the area. In applying Sections 30210, 30211, 30212, and 30214, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

The proposed project is to reauthorize the use of 75 acres of foredune area for OHV riding in a manner that will protect and maintain populations of endangered native plant communities and native dune grass colonies by expanding post and cable fence enclosures around these sensitive vegetation areas.

A wide variety of recreation uses occur at the Samoa Dunes area. The most popular activities include surfing, OHV riding, fishing, picnicking and beach combing/sightseeing. According to information submitted by the applicants, it is anticipated that OHV use will continue to increase

slightly each year as more people purchase OHVs and as further restrictions/closures occur within the coastal zone. With the development of additional beach access points and parking areas along the Samoa Peninsula, it is anticipated that hiking, beach combing, sightseeing and picnicking will decrease slightly at Samoa Dunes Recreation Area and the adjacent subject site.

To reduce potential user conflicts, non-OHV users are encouraged (through signing, maps, and brochures) to recreate in selected areas either closed to OHV use or far enough away from the OHVs to minimize negative impacts caused by noise and safety concerns. Pedestrian hiking trails exist to separate passive recreators from OHV activity. The applicants indicate that designation and signing of a pedestrian trail to the wave slope within the open riding area has reduced the safety problem in this location considerably. Speed limits have been posted and enforced in several locations where other types of recreation use occur.

The proposed project would reauthorize an OHV riding area on 75 acres of foredunes but would prohibit OHV use in certain sensitive areas of the subject property that OHV users have used, albeit illegally, in the past. However, previous historic use of the site does not fall within the prescriptive rights protections of Coastal Act Section 30211 because the subject site is publicly owned (in this case by the City of Eureka) and prescriptive rights for public access cannot accrue on publicly owned lands.

Furthermore, the Commission must take into account the provisions of Sections 30210 and 30214 that require the Commission to consider the need to provide access opportunities with the needs to protect sensitive coastal resources. This project is being proposed precisely because of the damage indiscriminate OHV use of the beach and dunes area has caused to the sensitive beach and dune ecosystem. The Commission concludes that restricting vehicle use from the sensitive parts of the dunes would assure protection for these coastal resources while at the same time providing opportunities for public access in the form of OHV use.

The Commission further finds that with regard to non-OHV public use, the proposed project is also consistent with the access policies of the Coastal Act Section. The project provides no specific new accessway for non-OHV use because potential conflicts with motorized traffic could be a hazard for the public attempting to access the coast through the property. Moreover, the signage that was installed pursuant to the original permit includes signs advising pedestrians of OHV travel routes to minimize conflicts. More importantly in terms of Section 30212(b), significant public access opportunities to the coast exist at virtually every point along the Samoa Peninsula for pedestrian use, including the improved safe pedestrian access facilities at the BLM recreation area.

Therefore, the Commission finds that the proposed project does not have any significant adverse effect on public access, and that the project as proposed without new public access is consistent with the requirements of Coastal Act Sections 30210, 30211, 30212, and 30214.

6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be found consistent with the policies of the Coastal Act. Mitigation measures that will minimize or avoid all significant adverse environmental impact have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

EXHIBITS:

1. Regional Location
2. Vicinity Map
3. Area Site Map
4. Project Site Map
5. Proposed Fenced Enclosure
6. Memorandum of Understanding (BLM & City of Eureka)

ATTACHMENT A

Standard Conditions:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.